

# Rules of Procedures

## Board of Appeals Town of Georgetown Maine

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## Purpose

The Board of Appeals (Board) functions as an impartial judicial body that decides administrative appeals, grants variances, and interprets certain town ordinance provisions. State statutes, town ordinances, and court cases govern the Board's activities and decisions. The Board has developed procedures and assigned responsibilities to administer those requirements, and codified them in the Georgetown Board of Appeals Ordinance. The Board has prepared these guidelines to describe its procedures in more detail and to define key legal terms.

The primary target audience is the Board membership itself. This *Rules of Procedure* provide orientation information for new members and reference information for all members. Appeal applicants are another important set of intended users. As very few people have filed an appeal application previously, they encounter an unfamiliar process and terms. By describing procedures in detail and defining legal terms, this *Rules of Procedure* is to help applicants prepare their applications and testimony.

Similarly, others who testify at a hearing -- such as appellants, town officers, town officials, and abutters -- should find this document a useful resource. In addition, it contributes to their understanding of Board decisions and the reasons for them.

During document preparation, the Board has relied in large part on the experience of its members. Some have served for many years, and all have heard many appeals over the past several years. To prepare for, or even to decide some appeals, members have often requested advice from the Maine Municipal Association (MMA) legal staff. The Board has incorporated much of that advice and many recommendations from the MMA's *Board of Appeals Manual*.

Except where a statute or ordinance establishes a process, the Board has the latitude to alter a procedure described below. When the Board sees a need to revise the *Rules of Procedure*, it will do so. If any users see a need to clarify or add something, the Board would appreciate being informed.

## Appeal Types

Two enabling state statutes, 30-A MRSA §2691 and 30-A MRSA §4353, govern municipal Boards of Appeals. Town ordinances give the Board jurisdiction to hear and decide three types of appeals, which this section describes. Sections that follow apply to all appeal types except as noted.

### Administrative Appeals

The Board may hear and decide administrative appeals by any person or entity *aggrieved* by a decision, action, or failure to act by the Planning Board, the Code Enforcement Officer, or Town Officers. The grievance may be with respect to a permit, license, or other required approval. Town ordinances or State statutes prescribe the Board's specific authority to hear and decide appeals.

### Variance Appeals

A variance is the Board's official authorization to depart from an ordinance provision. The Board may grant variances as provided in Town ordinances, the Board of Appeals

Ordinance, and applicable State statutes. Application forms describe the criteria applicants must meet for the Board to grant a variance.

## Reconsideration Appeals

The Board may reconsider any of its decisions for either of the following reasons:

1. The Board's record contains significant factual errors, due to fraud or mistake, regarding facts upon which the decision has been based; or
2. The Board has misinterpreted the ordinance, followed improper procedures, or acted beyond its jurisdiction.

## **Application Review**

Application forms for each appeal type are available in the Town Office. The forms describe the required information and filing instructions. This section describes three important legal components of application review -- application time frames, Board jurisdiction, and applicant standing -- and then the review process.

### Application Time Frames

**Administrative Appeals.** The aggrieved party must file an administrative appeal application within 30 days of the action being appealed. The Board can waive the time frame for good cause, which may be an extraordinary health or other serious situation.

**Variance Appeals.** The property owner must file a variance appeal application within 90 days of a Planning Board or Code Enforcement Officer written decision that a variance is required. The Board can waive the time frame for good cause, which may be an extraordinary health or other serious situation.

**Reconsideration Appeals.** A party to an administrative appeal or variance decision must file a reconsideration application within 10 days of the Board's original decision. The Board cannot waive that time frame,

### Board Jurisdiction

Stated simply, jurisdiction is the Board's authority to hear and decide a particular appeal. The enabling statutes limit the Board's jurisdiction to matters for which Town ordinances specify the precise subject matter and the official or officials whose decisions can be appealed to the board. Table 1 (page 7) lists the Town ordinances that give the Board jurisdiction to hear appeals of Planning Board and Code Enforcement Officer decisions.

30-A MRSA §4353 gives Boards of Appeals jurisdiction to grant variances from the provisions of Town land use ordinances as provided in those ordinances. Table 1 lists the Town ordinances that give the Board specific jurisdiction.

In addition, the Board of Appeals Ordinance gives the Board jurisdiction "to interpret the provisions, which are called into question, of any applicable Town ordinance." Ordinance interpretation occurs during the decision making process for an appeal.

### Applicant Standing

When a person (or persons) can demonstrate that he or she has suffered, or will suffer, an "injury" because of a Planning Board or Code Enforcement Officer decision, that person has standing to file an administrative appeal with the Board. Determinations of standing usually center on "injury" as a legal principle. The State Supreme Judicial Court

(SJC) has established criteria for such determinations, and the Board has developed application forms to ensure that applicants provide the necessary information.

Only a property owner or his or her agent has standing to file a variance request for a project on his or her property. Only parties to an appeal can request reconsideration of the Board's decision on that appeal. (The Board itself can decide to reconsider a decision.)

### Application Review

The Chair and Secretary review an application to determine if it contains all the required information. If not, the Secretary informs the applicant by letter or email of deficiencies. When the application contains all the necessary information, the Chair schedules a public meeting of the full Board. Even if the Chair believes that the Board has no jurisdiction to hear the requested appeal or that the applicant has not filed within the required deadline, the Chair must schedule an initial Board meeting on the appeal.

The Secretary notifies the applicant in writing 7 days before this meeting. The applicant need not attend, but is encouraged to do so. At this meeting, the Board reviews the application and accepts the application as an appeal if the Board determines:

1. That the application is complete,
2. That the application is timely,
3. That the Board has jurisdiction to take action, and
4. That the applicant has standing to make the appeal.

The Board decides the above by majority recorded vote. At this meeting, the Board determines if a member has a conflict of interest, and schedules hearings and meetings, and a site visit if necessary. Within 7 days after the meeting, the Secretary notifies the applicant of the Board's decision.

For a reconsideration appeal, the Board determines whether to reconsider in accordance with Section VII of the Board of Appeals Ordinance. Within 7 days after the application review meeting, the Secretary notifies the applicant of the Board's determination.

## **Meetings, Hearings, and Site Visits**

### Meetings

The Chair schedules hearings and Board meetings as needed. At least 7 days before a meeting, the Board Secretary posts notices on bulletin boards at the Town Office, Country Store, and Post Office, and distributes them to the Board of Selectmen and other town officials as appropriate. For hearings, the Secretary forwards the notice to abutters and other interested parties. The notice describes the purpose of the meeting. The Board Chair can waive the 7 day notice for meetings because of urgent matters.

The public has a right to be present any time the Board meets. The Board can restrict attendance for Executive Sessions, but such meetings are rare.

The Chair regulates the conduct of meetings and hearings. That is, the Chair

- Recognizes Board members and public participants who want to speak,
- Entertains motions,
- Rules on the relevance of questions asked, and
- Otherwise keeps the meeting in order.

If tempers start to flare, the Chair can ask an individual to leave and, if necessary, have a law enforcement officer remove an unruly person.

In meetings not advertised as "hearings," members of the public may attend and listen but have no statutory right to ask questions or to comment. At his or her discretion, the Chair can allow a reasonable amount of relevant comment from the public. The public may take notes, tape record, film, or make similar records of the meeting as long as it is not disruptive of the proceedings.

### Hearings

A hearing is a particular meeting, or occurs within a meeting, during which the Board gathers evidence related to an administrative appeal or a variance request. All the rules described above for meetings apply. In addition, the Chair can restrict public participation to testimony relevant to the appeal or variance request.

After the Board accepts an appeal or variance application, the Chair schedules public hearings to gather evidence and meetings to make decisions. Town ordinances require the Board to schedule hearings for administrative appeals and variances within 35 days of the filing of a completed application. As the Board must decide reconsideration appeals within 45 days of its original decision, it must schedule hearings and meetings to meet that time limit.

The Board Secretary ensures that the official record contains all the information, in whatever form, that served as a basis for the Board's decision. Board minutes describe the proceedings and all testimony, but need not contain a verbatim account of the entire meeting. The Board decides the amount of detail considering the complexity of the application and issues, and the degree of controversy. The minutes also contain a list of attendees.

The Chair provides a written agenda and begins the hearing with rulings and announcements:

1. Call the meeting to order.
2. Determine whether a quorum is present to do business.
3. Advise Board members that, if any of them has a direct or indirect bias or conflict of interest in this matter, he or she must abstain from participation as a Board member.
4. Designate an alternate member as a full voting member if a regular member is absent or disqualified. (See "Use of Alternate Members" below.)
5. Announce the Board's earlier determination that:
  - a. The appellant has filed a complete appeal application within the required time frames,
  - b. The appellant has standing,
  - c. The Secretary has provided the required notices of the meeting, and
  - d. The Board has jurisdiction.
6. Summarize the nature of the application and the documents submitted in support of or in opposition to the application.
7. Indicate the provisions of the applicable ordinances or statutes that give the Board jurisdiction to decide the appeal or variance request.
8. Explain the rules of procedure for the hearing and the extent to which he or she allows public comments and questions.

The Chair also explains that the purpose of the hearing is to gather all pertinent facts to satisfy the appellant's application and other related matters. To satisfy due process requirements, all parties have an opportunity to present evidence through the Chair. However, this meeting is not a full adjudicatory hearing with cross-examination and rebuttal.

The usual sequence of presentations is:

1. Presentation, without interruption, by the appellant and his/her attorney and witnesses;
2. Questions through the Chair to the appellant by Board members and people who are directly affected by the project (e.g., abutters) and requests for more detailed information on the evidence presented by the appellant;
3. Presentations, without interruption, by abutters or others who are directly affected by the project and their attorneys and witnesses;
4. Questions through the Chair by the appellant and Board members to the people directly affected and the witnesses who have made presentations;
5. Rebuttal statements by anyone who has testified previously;
6. Relevant comments or questions by other interested people in the audience.

After everyone has had an opportunity to testify or ask questions to the extent allowed by the Board's procedures, the Chair closes the hearing. If the Board needs more time to gather evidence, it may vote to continue the hearing to a later date.

### Site Visits

Site visits are particular public meetings during which a majority of the Board visits the site of an appeal or variance request. Therefore, the rules for meetings apply, including 7 day public notice and the public having a right to be present. Because the purpose is to gather evidence, site visits also have similar rules as hearings. For example, the Chair may allow participants to present relevant evidence and to comment on the evidence.

The Board determines if a site visit is necessary at a public meeting, if possible the meeting at which it finds the application complete. At that meeting, members review the application and other pertinent information to determine the physical evidence it seeks at the site visit, such as building location, building height, setbacks, soils and topography, vegetation, or erosion. The Board establishes methods for evidence presentations, for observations, and for recording observations. Specifically, the Chair designates members to record information in specific site areas, and assigns members to bring maps, drawings, cameras, notebooks, and other materials.

The Chair sets a date to visit the site, to prepare draft minutes, and to review minutes. The review meeting could be before opening the hearing, or if necessary, the hearing could be set for a later date. The Board also needs to arrange travel considering parking and walking limitations.

At the site, participants must speak and ask questions through the Chair. The Secretary records the identity of all participants and their connection to the appeal and prepares minutes of the site visit. The Board then reviews those minutes and approves by motion and majority recorded vote. The Secretary makes the minutes available at the hearing,

and includes them in the record in sufficient detail to allow a court to determine how the Board has evaluated all the evidence.

If a Board member is unable to attend a site visit, the Chair need not reschedule it. The Board publicly advises an absent member of what other members observed during the site visit at the next Board meeting. The Secretary documents the information provided.

## Voting

A quorum is 3 or more members. A majority vote is 3, whether 3, 4, or 5 members are present. A tie vote or failure to obtain three affirmative votes is a vote to reject the motion, application, or appeal under consideration.

The Board makes all decisions by votes on motions. The way it takes votes depends on the type of decision.

- Recorded votes are a count of members voting for or against a motion dealing with administrative matters or Findings of Fact. The Secretary records just the count, e.g., “5-0 for approval,” or “4 in favor, 1 opposed.”
- Roll call votes are individual votes for or against an appeal or variance decision. The Secretary records each vote on the motion by member name.
- Roll call votes with reasons have the added requirement that each member states the reasons for his or her vote on each Conclusion of Law. The Secretary records each vote on the motion by member name and his or her stated reasons.

## Decision Making Process

The Board follows a particular deliberative process when deciding administrative appeals, granting or denying variances, or interpreting ordinance provisions. The sections below describe specific components of that process, which the Board applies as it considers the following questions:

1. Does the Board have the authority, or “jurisdiction,” to make a decision on the application under the applicable ordinance?
2. What does the ordinance require the appellant to prove?
3. Does the ordinance prohibit or limit the type of use being proposed?
4. What factors must the Board consider under the ordinance in deciding whether to approve the application?
5. Has the appellant met his/her burden of proof?
  - a. Does the project comply with applicable requirements of the ordinance?
  - b. Is the evidence substantial?
  - c. Is the evidence credible?
  - d. Is it outweighed by conflicting evidence?
6. To what extent does the ordinance authorize the Board to impose conditions on its approval?

The Board also considers applicable state statutes not included in ordinances. Because SJC decisions interpret municipal ordinances and statutes, and have the force of law, the Board considers those decisions as well. In addition, when the Board encounters a question of law not clear in ordinances, statutes, or court cases, it seeks advice from the MMA legal staff.

## Standards of Review

Courts have established sets of principles for acceptance and review of evidence. Called “standards of review,” courts apply them for particular types of cases. The Board uses *de novo* and appellate reviews as shown in Table 1. Subsections above describe each appeal type (see page 1) and subsections below describe each review type.

Table 1			
Applicable Ordinances	Appeal Type	Action by	Standard of Review
Building Permit Minimum Lot Size Flood Plain Management Wireless Communications	<i>Administrative Appeal</i>	Planning Board or Code Enforcement Officer	<i>De novo</i>
Shoreland Zoning	<i>Administrative Appeal</i>	Code Enforcement Officer	<i>De novo</i>
Shoreland Zoning	<i>Administrative Appeal</i>	Planning Board	Appellate
Building Permit Shoreland Zoning Flood Plain Management Wireless Communications	<i>Variance Request</i>	The Planning Board or Code Enforcement Officer determines the need for a specific variance.	<i>De novo</i>

The standard of review for reconsideration appeals is the same as for the original hearing.

### De novo Review

*De novo* means “anew.” Thus, in a *de novo* review the Board starts the review process afresh, holds its own evidentiary hearings, creates its own record, and makes its own independent judgment of the appealed issues. It bases its decisions on evidence in the record that the Board itself has created. Any earlier record created by the Planning Board or the Code Enforcement Officer is relevant only to the extent that hearing participants offer it as evidence. The Board’s record includes Findings of Fact and Conclusion of Law, which are described below.

In deciding an administrative appeal on a *de novo* basis, the Board is not judging the validity of decisions made by the Planning Board or Code Enforcement Officer. The Board is deciding only whether its record supports a finding that it should approve or deny the appeal or variance. When the Board reverses a decision of the Planning Board or Code Enforcement Officer, the Board returns the case to the Planning Board or Code Enforcement Officer, as appropriate, for the issuance or denial of a building permit.

### Appellate Review

In an appellate proceeding, the Board reviews the Planning Board record and determines whether the Planning Board decision is consistent with governing ordinances and the evidence available to it. The Board can reverse a Planning Board decision only upon finding that the decision is contrary to specific provisions of ordinances or statutes, or contrary to the facts presented to the Planning Board.

The Board cannot receive or consider new evidence. The Board may hear presentations by each of the parties, but only for the purposes of summarizing the case or for clarification of relevant ordinances. The Board bases its conclusions solely on the facts stated in



the record of the Planning Board. The Board does not attempt to determine Findings of Fact from the Planning Board record. If that record lacks adequate findings, the Board remands the matter to the Planning Board with instructions to develop them. In addition, the Board can develop Conclusion of Law. The Board decides to affirm, reverse, or remand the Planning Board decision by roll call vote.

#### The “Operative Decision-Maker”

When courts review a municipal decision, they conduct an appellate review of the “operative decision-maker’s” record. That means the SJC and lower courts review the record of the last municipal agency to conduct a *de novo* review. Therefore, as shown in Table 1 above, the Board of Appeals is the operative decision-maker for nearly all of its appeals. The exception is an appeal of a Planning Board decision made under the Shoreland Zoning Ordinance, for which the Planning Board is the operative decision-maker.

The SJC has consistently stated that courts expect the operative decision-maker’s record to document clearly the relevant evidence, findings, decisions, votes, and specific reasons for some votes. Moreover, courts expect operative decision-makers to apply a decision making process that produces a record with those components. The following sections describe the major components of Board decisions and of its record.

#### Ordinance Interpretation

The Board determines meanings of ordinance provisions within its decision making process. Usually a provision is sufficiently clear for the Board and all parties to agree on its meaning. However, at times disagreement requires the Board to interpret a provision as a distinct matter. Because courts must often interpret statutes and ordinances, the SJC has established a set of principles for ordinance interpretation. The Board, as a judicial body, applies the SJC principles, which include:

1. Ordinance interpretation is a question of law that the Board can review *de novo*.
2. The Board construes terms and expressions reasonably with regard to both the objectives sought and the general structure of the ordinance as a whole.
3. The Board looks first to the plain meaning of the language to give effect to legislative intent. If the meaning of the provision is clear on its face, then the Board need not look beyond the words themselves.
4. The Board gives terms not otherwise defined their common and generally accepted meaning unless indicated otherwise by their context in the ordinance.
5. If the Planning Board or Code Enforcement Officer has stated a meaning, the Board gives weight to it. However, a Planning Board or Code Enforcement Officer construction is not conclusive or binding on the Board.
6. The Board cannot interpret an ordinance in such a way to read a provision out of existence or to render it “surplusage”, i.e., as an excessive or nonessential matter.

#### **Findings of Fact**

Findings of Fact are determinations of relevant facts supported by the evidence in the record, and are the basis for Conclusion of Law. Taken together, the statements summarize all the basic facts involved in a particular appeal or application. Such a summary should include:

1. The appellant's name and whether the appellant is the property owner, an abutter, another person with standing, or an agent of these individuals.
2. The name of the property owner if not the appellant.
3. The address of the property location, and tax map and lot numbers.
4. The name of the project requestor, and address if not above; what he or she requested of the Planning Board or Code Enforcement Officer; when he or she made the request, and a brief description of the project.
5. When the Planning Board or Code Enforcement Officer acted, and their action.
6. When the appellant filed an administrative appeal or a variance application, and when the Board of Appeals accepted it as complete and timely.
7. A description of what the appellant requested of the Board of Appeals.
8. Town ordinance paragraphs that the appellant cites as relevant to this appeal.
9. When the Board held a public hearing, and when it continued its decision making process in a public meeting.
10. Relevant evidence submitted by the appellant.
11. Relevant evidence submitted by people other than the appellant for or against the appeal.
12. Relevant evidence from Board members' personal knowledge or from experts.
13. The review criteria: provisions or standards of applicable ordinances, statutes, or court cases that the appellant must meet for the Board to approve his/her request.

The Board develops Findings of Fact separately or in groups of related findings. It approves or disapproves findings, separately or in groups, by recorded votes. If three or more members vote affirmatively, the Board approves the Findings of Fact.

## Conclusions of Law

Conclusion of Law are statements linking specific Findings of Fact to the criteria in relevant ordinances that the appellant must meet in order to receive the Board's approval. The Board must record each Conclusion of Law in sufficient detail to make it clear that the proposed project does, or does not, meet all the ordinance requirements. For example, ordinances require an appellant for a variance to demonstrate that without the variance he or she cannot obtain a reasonable return on his or her property. The Board must define exactly what it considers to be a reasonable return and why it believes that the appellant can (or cannot) obtain it without the requested variance.

The Board approves or disapproves each Conclusion of Law by a roll call vote with reasons. If three or more members vote affirmatively, the Board has approved the Conclusion of Law.

## Decisions

Findings of Fact and Conclusion of Law form the basis of the Board's decision to approve or disapprove the application. The Board then develops a set of decision statements, with the set often referred to as the Board's "decision." The decision making criteria differs for *de novo* and appellate review.

### Decisions from *De novo* Reviews

When the Board conducts a *de novo* review, it decides whether evidence in its record, when compared to the requirements of ordinances and statutes, is sufficient to approve

the appeal. If the evidence leads the Board to conclude that a proposed project complies with all of the relevant ordinance and statute requirements, the Board must approve the building permit application. If it cannot conclude that the proposed project meets each requirement, the Board must deny the application. The Planning Board and Code Enforcement Officer must approve or deny the building permit application in accordance with the Board's decision.

#### Decisions from Appellate Reviews

From an appellate review, the Board's decision is to affirm or reverse a Planning Board decision, or to remand the matter to the Planning Board for additional fact finding and/or conclusions. The Board bases its decision solely on the Planning Board record, and evidence from its own hearings supporting or contradicting that record.

Therefore, an appellate review requires a Planning Board record with adequate Findings of Fact and the reasons for its decisions. If the Planning Board record lacks clear statements of any components relevant to the review, the Board does not attempt to construct them from the Planning Board minutes or from other documents. If the Board finds the Planning Board record inadequate for appellate review, it remands the matter to the Planning Board with a list of deficiencies. That list might include findings for applicable ordinance provisions, evidence related to those provisions, reasons for the Planning Board decision, and votes for findings and for reasons.

#### Date of Decision

After the Board completes its findings and conclusions, it develops and votes on its preliminary decision. The Secretary prepares a notice of decision (described below) with the preliminary decision. The Board reviews it at a public meeting, usually a week later. If the Board approves the Findings of Fact, the Conclusion of Law, and the decision or set of decisions, it votes to approve them. This is the vote on the Board's final decision and the date is the "date of decision."

The Board at times amends the notice of decision prepared by the Secretary. The Board amends findings, conclusions, and/or the decision by motion and majority, recorded vote. If the Board determines the amendments are minor, it votes to approve the Notice as amended, thereby approving the final decision and establishing the date of decision. If it considers the amendments too complex for approval at this meeting, it schedules another public meeting and repeats the formal review and approval.

#### Notice of Decision

The Notice of Decision contains the Board's Findings of Fact, Conclusion of Law, and the decision itself. After Board approval, the Secretary mails the Notice to the appellant and distributes it to town officers, applicable town officials, and other parties with a legal interest. The Board ensures that the Notice contains all the relevant evidence (Findings of Fact) and reasons for the decision (Conclusion of Law). This information enables those who receive it, and courts if appealed, to understand how the Board made its decisions.

The Notice of Decision contains additional statements for the appellant and others with standing:

- The Board may reconsider any decision if a party with standing files an Application for Reconsideration, available at the Town Office, within 10 days of the Board's decision. Appellants should see the Board of Appeals Ordinance, Section XI.
- For Administrative appeals and variance requests:  
Any party may appeal this decision to the Superior Court within 45 days of the decision date. Appellants should see the Board of Appeals Ordinance, Section XII.
- For reconsideration appeals:  
Any party may appeal this decision to the Superior Court within 15 days of the decision date. Appellants should see the Board of Appeals Ordinance, Section XII.

## Use of Alternate Board Members

The Chair appoints an alternate member to act as a full voting member when

- The Board has fewer than five full members at a meeting,
- A full member is disqualified from voting on an application or appeal currently before the Board,
- A full member is unable to attend a meeting at which Board business or an application or appeal is to be considered,
- A full member was absent from a previous meeting at which an application or appeal currently under consideration before the Board has been discussed, or
- For a specific application or appeal until the case is decided.

The Secretary ensures that the appropriate minutes document the appointment of an alternate member and the reasons for that appointment. An alternate member appointed to act as a full member may make motions and vote on matters concerning administrative business, appeal applications, and appeal findings, conclusions, or decisions.

An alternate member not appointed to take the place of a regular member at a particular meeting has the same status as that of a member of the public. Therefore, an alternate may make comments or ask questions, but only to the extent that the Chair allows the public to do this. As a member of the public an alternate cannot make comments once the Chair has closed a hearing and the Board has begun its deliberations and decision making process, unless the Chair recognizes the member.

## Members Missing Meetings

The Board places great importance on the need for all Board members to hear the evidence and assess the credibility of witnesses in order to afford due process to the parties to the Board's proceedings. If a member senses that an application review and decision will occur when he or she has to miss meetings, that member should step aside and allow the Chair to designate an alternate member to hear and decide that appeal.

If no qualified alternate member is available, and so many members have an attendance problem that the Board lacks a quorum, then the member attends when possible and follows these guidelines:

1. Read hearing and meeting minutes, review any documents or other evidence submitted at those meetings, and listen/watch any audio or video recordings of those meetings.

2. Prepare a written statement describing what the member has done to educate himself/herself about what occurred at the missed meeting.
3. Sign the statement (preferably in notarized form), and enter it into the record at the next meeting.

The Chair decides whether the member has satisfactorily familiarized himself or herself with the matter before the Board. The Secretary documents that decision and the Chair's reasons for it.

## Glossary

The Board performs judicial functions. Inherent in such functions are the application of legal principles and the use of terms often defined specifically for those principles. This Glossary defines such terms, often by modifying a general legal definition to apply to Board of Appeals activities.

Terms in *italics* are defined elsewhere in the Glossary.

**Aggrieved party.** A qualification for *standing*. Definitions in Town ordinances provide criteria. See also *Party*.

### Appellant.

1. The *party* who files an appeal application and the Board has accepted the application.
2. The status of a *party* whose application the Board has accepted. Before application acceptance, the party is an *applicant*.

**Appellate review.** See *Review*.

### Applicant.

1. The *party* who files an appeal application, but the Board has not yet accepted the application.
2. The status of a *party* whose application the Board has not yet accepted. After application acceptance, the party is an *appellant*.

**Conclusion of Law.** A statement of the law applicable to a case in view of facts found to be true. (See page 9.) At times shortened to "conclusion."

**De novo.** Over again, as if for the first time. See *Review*.

### Decision.

1. An authoritative determination, as a decree or judgment, made after consideration of facts or law.
2. A report or document containing such a determination; a shortened term for the "Notice of Decision" described on page 10.

**Evidence.** Something (including testimony, documents, and tangible objects) that tends to prove or disprove the existence of an alleged fact (e.g., the bloody glove is the key piece of evidence for the prosecution).

**Findings.** Short for "Findings of Fact." (See *Finding of Fact* and page 8.)

**Finding of Fact.** A determination by a judge or administrative agency of a fact supported by the evidence in the record. Often shortened to "findings." (See page 8.)

**Injury.** The violation of one's legal right, for which the law provides a *remedy*.

**Jurisdiction.** The power, right, or authority to interpret, apply, and declare the law (as by rendering a decision). (See "Board Jurisdiction" on page 2.)

**MRSA (or M.R.S.A.).** An abbreviation for Maine Revised Statutes Annotated, the formal name for state laws enacted by the legislature. Usually referenced in the format of "Title MRSA Section Paragraph," e.g. 30-A MRSA §2691, 3.

**Ordinance.** A municipal regulation.

**Party.** A person, group, or entity constituting alone or with others one side of a proceeding, transaction, or agreement.

**Record.** The documentary account of something as

- a. An official document that records the acts of a public body or officer,
- b. An official copy of a document deposited with a designated officer,
- c. The official set of papers used and generated in a proceeding.

**Remand.** To return a matter from the Board of Appeals to the Planning Board.

**Remedy.** The means of enforcing a right or preventing or redressing a wrong; legal or equitable relief.

**Review.** A judicial reexamination and reconsideration of the legality of an agency's, official's, or court's proceedings and decisions. (See "Appellate Review" on page 7 and "*De novo* Review" on page 7)

**Standing.**

1. The status of being qualified to assert or enforce legal rights or duties before the Board of Appeals because one has a sufficient and protectable interest in the outcome of the controversy being decided, and has suffered or is threatened with actual *injury*. (See "Applicant Standing" on page 2.)  
A *party* with standing is sometimes referred to as an *aggrieved party*.
2. A principle requiring that a *party* have standing in order to justify the exercise of the court's remedial powers

**Statute.** A law enacted by the legislative branch of a state government.

**Variance.** Official authorization for a use of real property that is prohibited by an ordinance.